

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPLAINT OF THE ASSOCIATED  
MAIL AND PARCEL CENTERS, et.al.

Docket No. C2012-1

**MOTION OF THE UNITED STATES POSTAL SERVICE  
TO DISMISS COMPLAINT**  
(April 4, 2012)

Pursuant to rule 3030.12(b), the United States Postal Service submits its motion to dismiss the Complaint filed by the Associated Mail and Parcel Centers, et al. ("AMPC").<sup>1</sup> In its complaint, AMPC alleges that the Postal Service has violated certain provisions of Title 39, United States Code, by introducing enhancements to its competitive Post Office Box service without requesting a decision or order from the Postal Regulatory Commission ("Commission"). In short, AMPC's complaint should be dismissed, because the issues raised by AMPC have been resolved by the Commission in earlier proceedings (Docket Nos. MC2011-25 and CP2012-2). In addition, AMPC's complaint is procedurally defective, because it has not complied with the requirements of 39 C.F.R. § 3030.10(a)(7) to notify the Commission whether the issues presented in their complaint were "pending in or have been resolved by an existing Commission proceeding."<sup>2</sup>

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<sup>1</sup> Pursuant to this rule, the Postal Service's Answer is deferred. If the Commission denies the Postal Service's motion or postpones disposition, the Postal Service's answer is due within 10 days of the Commission's action.

<sup>2</sup> AMPC stated that "Complainants are aware of no other pending Commission forum considering the facts or laws of this complainer 39 CFR 3003.10(a)(7)" (Complaint at 20), but ignores Docket Nos. MC2011-25, and, to a lesser degree, Docket No. CP2012-2.

## BACKGROUND

In Docket No. MC2010-20, the United States Postal Service requested that the Postal Regulatory Commission transfer Post Office Box service at 49 locations from the market dominant product list to the competitive product list.<sup>3</sup> The Commission approved this initial transfer in Order No. 473.<sup>4</sup> At the time of the Postal Service's request, the Postal Service noted that it was conducting evaluations of all Post Office Box locations and would propose additional transfers if warranted.<sup>5</sup> Anticipating such future requests, and responding to Comments filed by AMPC and other Commercial Mail Receiving Agencies ("CMRAs"), the Commission noted that if the Postal Service proposed to offer additional services to its competitive Post Office Box service, those issues would be addressed in future proceedings.<sup>6</sup>

After conducting additional evaluations of all Post Office Box locations, the Postal Service requested, in Docket No. MC2011-25, that Post Office Box service at approximately 6,800 locations be transferred from the market dominant product list to the competitive product list.<sup>7</sup> The Commission approved this transfer request in Order No. 780.<sup>8</sup> In its request, the Postal Service specifically discussed its plans to enhance service at many competitive Post Office Box locations.<sup>9</sup> Acknowledging the Postal Service's intent to offer product enhancements, the Commission directed the Postal Service to explain how it would develop and report costs for such enhancements when

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<sup>3</sup> Request of the United States Postal Service (Request MC2010-20), Docket No. MC2010-20 (Mar. 12, 2010).

<sup>4</sup> Order No. 473, Docket No. MC2010-20 (Jun. 17, 2010).

<sup>5</sup> Request MC2010-20, *supra* note 3, at 2.

<sup>6</sup> Order No. 473, *supra* note 4, at 8.

<sup>7</sup> Request of the United States Postal Service (Request MC2011-25), Docket No. MC2011-25 (May 13, 2011).

<sup>8</sup> Order No. 780, Docket No. MC2011-25 (July 29, 2011).

<sup>9</sup> Request MC2011-25, *supra* note 7, at 7.

it proposed to change prices for competitive Post Office Box service.<sup>10</sup> The Postal Service provided this information in Docket No. CP2012-2.<sup>11</sup> Consistent with the Commission's orders, The Postal Service began offering enhanced Post Office Box service at many of its competitive locations in January of 2012.

## **ARGUMENT**

### **I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE ISSUES PRESENTED HAVE BEEN RESOLVED IN OTHER COMMISSION PROCEEDINGS.**

In its complaint, AMPC claims that the “On or about January 20, The Postal Service released without: 1.) public notice; 2.) request for a decision or order by the Postal Regulatory Commission; 3.) request for an advisory opinion or any other form of approval from the Postal Regulatory Commission, or; 4.) publication in the Federal Register, certain changes in the services that the USPS provides to ‘competitive’ PO Boxes.”<sup>12</sup> Specifically, AMPC complains about the Postal Service offering Post Office Box customers street-style addressing, email notification of mail delivery (“real mail notification”), and the ability to receive packages from private carriers.<sup>13</sup> AMPC asserts that the Postal Service has participated in “subterfuge” by unilaterally changing its competitive Post Office Box service after filing Docket No. MC2010-20.<sup>14</sup> AMPC ultimately alleges that the Postal Service's actions are in violation of 39 U.S.C. §§ 3642, 3633, and 3661, and 39 C.F.R. § 3020.31. However, as detailed below, AMPC ignores

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<sup>10</sup> Order 780, *supra* note 8, at 14.

<sup>11</sup> Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 11-8 (Notice CP2012-2), Docket No. CP2012-2, at 2, n. 1 (November 22, 2011).

<sup>12</sup> Complaint of the Associated Mail and Parcel Centers, et al. (AMPC Complaint), Docket No. C2012-1, at 3 (March 15, 2012).

<sup>13</sup> *Id.* at 10. AMPC also mentions enhancements that allow Competitive Post Office Box customers to use the “#” designation in lieu of the “P.O. Box” designation. However, these are not separate enhancements, but are instead part of the larger street-style addressing improvement.

<sup>14</sup> *Id.* at 12.

two subsequent proceedings, Commission Docket Nos. MC2011-25 and CP2012-2, which resolved the issues raised in their complaint. Moreover, merely adding additional features to Post Office Box service does not implicate the provisions of Section 3661.

**a. The Postal Service Has Already Complied With the Requirements Of Section 3642 By Filing Docket No. MC2011-25.**

First, AMPC claims that by failing to seek Commission approval of the enhancements mentioned above, the Postal Service has violated 39 U.S.C. § 3642. In pertinent part, this section requires the Commission to hold an informal public hearing, with opportunity for public comment, when the Postal Service transfers products between the market-dominant and competitive product lists.<sup>15</sup> To support its claim that the Postal Service has not complied with the requirements of Section 3642, and that the Commission has not approved the enhancements made to competitive Post Office Box service, AMPC repeatedly quotes Order No. 473, from Docket No. MC2010-20.<sup>16</sup> In particular, AMPC relies on a section of the order that addresses the comments filed by AMPC and other small businesses, which states:

the concerns raised by these commenters are not insignificant. They are however, premature ... If, in the future, the Postal Service proposes to offer ancillary P.O. Box Services, these issues can be raised.”<sup>17</sup>

AMPC claims that the time has now come to address its concerns, which were “foreshadowed by Order 473.”<sup>18</sup> However, the issues raised by AMPC have already been resolved in a previous Section 3642 proceeding, Docket No.

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<sup>15</sup> See 39 U.S.C. § 3642.

<sup>16</sup> See *Id.* at 4-5, 11.

<sup>17</sup> Order No. 473, *supra* note 4, at 9. The Commission made this statement in response to numerous comments from small business interests, including AMPC, who were concerned about the Postal Service introducing enhancements to its Competitive Post Office Box service.

<sup>18</sup> AMPC Complaint, *supra* note 12, at 5.

MC2011-25. Consequently, the Postal Service has complied with the requirements of Section 3642.

In Docket No. MC2011-25, the Postal Service requested the transfer of an additional 6,800 Post Office Box locations to the competitive product list.<sup>19</sup> In its request to the Commission, the Postal Service specifically discussed its intent to enhance service at certain competitive locations by stating that “the competitive price structure provides flexibility to enhance box service,” by giving the Postal Service “greater ability to recoup the cost of investments through price increases...”<sup>20</sup> Indeed, the Postal Service went on to discuss additional enhancements that it had introduced at the 49 Post Office Box locations transferred in Docket No. MC2010-20, including expanded access hours, ‘baker’s dozen’ pricing, and Signature on file service.<sup>21</sup>

The Commission acknowledged the Postal Service’s intent to enhance its competitive Post Office Box service when it directed the Postal Service to “explain how it would develop and report these costs [for service enhancements] when it proposes to change prices for competitive P.O. Box Service.”<sup>22</sup> In contrast to Docket No. MC2010-20, where AMPC and numerous small businesses filed comments, the Commission pointed out that “no PMB service provider or other small business concern filed any

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<sup>19</sup> See Request MC2011-25, *supra* note 7.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 9. Curiously, AMPC does not mention any of these enhancements as being problematic in its complaint, seemingly implying that a public hearing is only appropriate for those enhancements that it considers to be most important. The Postal Service did not specifically mention street-style addressing or real mail notification in its notice in Docket No. MC2011-25, because both enhancements were still in development, and thus were more speculative than the enhancements that were identified. But these enhancements, while not mentioned as examples, were still covered by the Postal Service’s general discussion of enhancements.

<sup>22</sup> Order No. 780, *supra* note 8, at 14.

comments or otherwise objected to the Request.”<sup>23</sup> The Postal Service provided the required costing information in Docket No. CP2012-2, specifically addressing street-style addressing and real mail notification.<sup>24</sup> Thus, when Docket No. MC2011-25 was filed, over 8 months before the implementation of the service enhancements at the 6800 locations transferred in that docket, public notice of the Postal Service’s intent to enhance its competitive Post Office Box service was provided. What is more, the filing of Docket No. MC2011-25 satisfied the requirements of Section 3642. AMPC did not avail itself of the opportunity to comment in that proceeding.

**b. The Postal Service Has Already Complied With The Requirements Of Section 3633 And Rule 3020.31.**

In addition, AMPC claims that the Postal Service’s actions are in violation of 39 U.S.C. § 3633 and 39 C.F.R. § 3020.31. Section 3633 sets forth three standards for competitive products. Subsection (a)(1) prohibits the subsidization of competitive products by market dominant products. Subsection (a)(2) requires that each competitive product cover its attributable costs. Subsection (a)(3) requires that all competitive products collectively cover an appropriate share of Postal Service institutional costs, which the Commission has determined to be 5.5 percent.

Commission rule 3020.31 lists the required contents of a request to modify the market-dominant or competitive product lists. Specifically, rule 3020.31 requires

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<sup>23</sup> *Id.* at 13. By actively participating in Docket No. MC2010-20, AMPC has demonstrated that it is aware of Commission proceedings and capable of making its concerns known to the Commission. Unfortunately, by failing to participate in Docket No. MC2011-25, AMPC missed its opportunity to raise these concerns with the Commission at the appropriate time.

<sup>24</sup> See Notice CP2012-2, *supra* note 11, at 2, n.1.

requests to include “all supporting justification upon which the Postal Service proposes to rely” in requesting a modification.<sup>25</sup>

AMPC claims that the enhancements introduced by the Postal Service are “un-priced,”<sup>26</sup> and that discovery would be needed to determine the costs of implementing such service enhancements.<sup>27</sup> However, the Postal Service has already met its obligation to demonstrate compliance with these statutes by providing the Commission, in Docket Nos. MC2011-25 and CP2012-2, with the required cost information.

First, in Docket No. MC2011-25, and in conformance with Commission Rule 3020.32(c), the Postal Service explained why its transfer request complied with the standards of Section 3633. In its explanation, the Postal Service stated that the competitive Post Office Box service would comply with Section 3633, because the product “will have an estimated cost coverage of 143 percent...”<sup>28</sup> As mentioned above, the Postal Service’s request in that docket specifically discussed its intent to enhance its competitive Post Office Box service.<sup>29</sup> The Commission approved the transfer in Order No. 780 and did not raise Section 3633 as an obstacle to reclassification.<sup>30</sup> In that order the Commission requested that the Postal Service

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<sup>25</sup> 39 C.F.R. § 3020.31(e).

<sup>26</sup> AMPC Complaint, *supra* note 12, at 15. While it is true that the Postal Service has not separately priced each individual enhancement, the Postal Service has substantially increased the prices of its competitive Post Office Box service to, in part, cover the costs of providing such enhancements. (*Compare* fees in Letter to Shoshana Grove on Post Office Box Fees, filed December 29, 2011, in Docket No. CP2012-2, *with* predecessor fees in United States Postal Service Notice of Market-Dominant Price Adjustment, Appendix A, page 80, filed February 10, 2009, in Docket No. R2009-2). The Commission acknowledged that the cost of implementing such enhancements would be covered by future price increases, when it required the Postal Service to explain how it would develop and report the cost of such enhancements when it proposes to change prices for competitive P.O. Box Service. (See Order No. 780, *supra* note 8, at 14).

<sup>27</sup> AMPC Complaint, *supra* note 12, at 16

<sup>28</sup> Request MC2011-25, *supra* note 7, at 2-3.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> See Order No. 780, *supra* note 8.

explain how it would develop and report the costs for such service enhancements when it changed the prices for competitive P.O. Box Service.<sup>31</sup>

In response to Order No. 780, the Postal Service provided the requested information in Docket No. CP2012-2.<sup>32</sup> In that docket the Postal Service again demonstrated that the cost coverage for its competitive Post Office Box service was substantially above 100 percent.<sup>33</sup> Most significantly, in providing the Commission with the requested report on how it intended to obtain costs for the Post Office Box service enhancements, the Postal Service specifically addressed costs related to street-style addressing and real mail notification:

This filing includes the establishment of price ranges for competitive Post Office Box service. Order No. 780 at 14 (July 29, 2011) directed the Postal Service to explain how it will develop and report costs for service enhancements offered at competitive P.O. Box service locations, when it proposes to change prices for competitive P.O. Box service. Costs for Competitive Post Office Box service will be computed from a combination of specific finance number costs for projects, such as setting up the street address option and the costs associated with making physical changes to locations. These would be reported as product specific costs, along with advertising for the product. Information Technology (IT) costs will be calculated by reporting the number of e-mail or text notifications to customers and the average time and data transfer cost per notification.<sup>34</sup>

Though Commission Rule 3015.6 specifically allows the Commission to request additional information “necessary to enable it to evaluate whether competitive products will be in compliance with 39 U.S.C. 3633(a),” the Commission did not do so. Thus, through its submissions in Docket Nos. MC2011-25 and CP2012-2, the Postal Service

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<sup>31</sup> *Id.* at 14.

<sup>32</sup> The report filed in Docket No. CP2012-2 included information on how the Postal Service intended to calculate costs related to service enhancements introduced as part of its competitive Post Office Box service. Specific cost information related to the enhancements added in January, 2012 will be made available during the Annual Compliance Review process for FY 2012. However, these costs should not threaten the ability of competitive Post Office Box service to cover its attributable costs.

<sup>33</sup> Nonpublic Annex, Docket No. CP2012-2, as revised (December 2, 2012).

<sup>34</sup> Notice CP2012-2, *supra* note 11, at 2, n. 1.



satisfied the requirements of Section 3633 and Commission Rule 3020.31. In addition, Docket No. CP2012-2 provided AMPC with another opportunity to be informed of the Postal Service's intent to offer product enhancements to its competitive Post Office Box service. Unfortunately, AMPC missed another opportunity to alert the Commission of its concerns.

**c. The Postal Service Has Not Taken Any Action That Would Implicate The Requirements Of Section 3661.**

Finally, AMPC claims that the Postal Service's actions are in violation of 39 U.S.C. § 3661, which requires the Postal Service to request an advisory opinion from the Commission when it "determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis."<sup>35</sup> Before the Commission can issue an advisory opinion, it must hold a public hearing on the record under Sections 556 and 557 of the Administrative Procedure Act.<sup>36</sup> AMPC asserts that "adding un-priced services to PO Boxes at post offices across the entire United States is, by definition, both 'nationwide' and a 'change in service.'"<sup>37</sup> However, despite AMPC's assertions to the contrary, the enhancements made to competitive Post Office Box service do not implicate the requirements of Section 3661.

When describing the nature of Post Office Box service in Docket No. MC2010-20, the Commission stated that the "fundamental purpose" of a Post Office Box was to "serve as a paid receptacle for receipt of correspondence and packages sent to the

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<sup>35</sup> 39 U.S.C. § 3661(b).

<sup>36</sup> 39 U.S.C. § 3661(c).

<sup>37</sup> AMPC Complaint, *supra* note 12, at 15..

addressee.”<sup>38</sup> In fact, despite the claims of CMRAs – which asserted that additional services, such as street addressing and e-mail notification of delivery, distinguished PMBs from Post Office Boxes – the Commission stated that:

“Incidental differences in the services simply distinguish the products offered to the public. At bottom, each product provides a means to accomplish delivery of correspondence and packages sent to addressees.”<sup>39</sup>

Mirroring the Commission’s logic, the enhancements made to the Postal Service’s competitive Post Office Box service, including street-style addressing and real mail notification, do not change the fundamental nature of Post Office Box service.<sup>40</sup> Thus, since the Postal Service’s actions have not changed the “nature of postal services,” the requirements of Section 3661 have not been implicated.

Despite AMPC’s assertions, Section 3661 was not intended to cover minor service enhancements made to Postal products. Were this the case, the Postal Service would be required to request an advisory opinion from the Commission every time it made any change – no matter how insignificant – to a product that was offered nationwide. Rather, based on the plain language of the statute, Section 3661 was intended to cover instances where the Post Service intended to change the very “nature” of a postal service. Recent service change cases include Docket Nos. N2012-1 (a mail processing consolidation plan that changes First-Class and Standard-Mail service standards), N2011-1 (a plan to reduce the number of Post Offices nationwide), N2010-1 (a plan to move from a six to five-day delivery schedule), N2009-1 (a plan to

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<sup>38</sup> Order No. 473, *supra* note 4, at 10.

<sup>39</sup> *Id.*

<sup>40</sup> To the extent that these enhancements do change the definition of Post Office Box service, the Public has already received notice of the introduction of such enhancements in Docket Nos. MC2011-25 and CP2012-2.

consolidate the number of stations and branches nationwide), and N2006-1 (a mail processing consolidation plan resulting in changed transit times between certain ZIP Code pairs). These cases clearly illustrate that Section 3661 proceedings are designed to handle major changes in the way the Postal Service provides service to the public, not enhancements to a specific product.

The importance accorded to such service changes is demonstrated by the fact that Congress chose to require proceedings initiated under Section 3661 to be formal hearings “on the record” according to Sections 556 and 557 of the Administrative Procedure Act.<sup>41</sup> In contrast, when enacting the Postal Accountability and Enhancement Act (“PAEA”), Congress lowered the hearing requirements for rate and classification proceedings brought under Section 3642.<sup>42</sup> This distinction is in keeping with the overall pricing flexibility that Congress gave to the Postal Service when it enacted the PAEA in 2006. Had Congress intended for there to be formal hearings for every product enhancement, rate change, or classification change, it could have simply preserved the regulatory system in place before the PAEA.<sup>43</sup>

Therefore, the Postal Service does not believe that introducing enhancements to its competitive Post Office Box service implicates Section 3661. Moreover, the issues raised by the complainants would not need to be relitigated in a Section 3661 proceeding, since they have previously been resolved by prior Section 3642 proceedings.

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<sup>41</sup> 39 U.S.C. § 3661(c).

<sup>42</sup> Compare 39 U.S.C. § 3642 with Former Title 39 U.S.C. § 3624.

<sup>43</sup> It is also important to note that adopting AMPC’s definition of what kinds of proceedings must be initiated under Section 3661 would mean that formal hearings would be required for almost every change the Postal Service made to its products. Such a scenario would undoubtedly create gridlock at the Commission.

**II. EVEN IF THE COMMISSION FINDS THAT THE ISSUES RAISED BY AMPC HAVE NOT BEEN RESOLVED IN PRIOR PROCEEDINGS, THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT DOES NOT COMPLY WITH 39 C.F.R. § 3030.10(a)(7).**

39 C.F.R. § 3030.10(a)(7) requires the complainant to notify the Commission whether the issues presented in their complaint are “pending in or have been resolved by an existing Commission proceeding.”<sup>44</sup> If the issues raised by the complaint have been addressed by an existing Commission docket, the complainant must “provide an explanation why timely resolution cannot be achieved in that forum.”<sup>45</sup> Since AMPC has not disclosed the above proceedings (Docket Nos. MC2011-25 and CP2012-2) to the Commission, or explained why timely resolution was not had in one of those prior proceedings, AMPC should be foreclosed from initiating this complaint until such time as they have met these requirements.

**CONCLUSION**

Based on the above discussion, the issues raised in AMPC’s complaint have clearly been resolved by prior Commission proceedings. Complainants should have availed themselves of the opportunity to raise their concerns to the Commission during established proceedings, rather than waiting to file an after the fact objection.<sup>46</sup> Even if the Commission finds that the issues raised in AMPC’s complaint have not been resolved by the proceedings discussed above, AMPC’s complaint violates the requirements of 39 C.F.R. § 3030.10(a)(7), and is thus procedurally deficient. In either

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<sup>44</sup> 39 C.F.R. § 3030.10(a)(7).

<sup>45</sup> *Id.*

<sup>46</sup> Interested parties should not be entitled to a “second-bite at the apple” after the Commission has previously resolved the issues raised in the complaint. To permit such behavior would wreak havoc on the Postal Service’s ability to reliably and predictably introduce services once a Commission proceeding has concluded.

case, the Postal Service respectfully requests that the Commission dismiss AMPC's complaint.

Respectfully submitted,

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